



REMARKS

I. Status of the Claims of Patent Application

There are 18 claims pending in the application comprising claims 28-45.

II. Summary of the Office Action

In the present Office Action, Claims 28-35, 37, and 39 are rejected under 35 U.S.C. §103(a) as being unpatentable over Sygnator U.S. Patent 3,807,526 in view of Green et al. U.S. Patent 6,176,576 (hereinafter, "Green"). Claim 36 is rejected under 35 U.S.C. §103(a) as being unpatentable over Sygnator U.S. Patent 3,807,526 in view of Green et al. U.S. Patent 6,176,576 (hereinafter, "Green"), and further in view of Cragg et al. U.S. Patent 3,781,492 (hereinafter, "Cragg"). Claims 38, and 40-45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sygnator U.S. Patent 3,807,526 in view of Green et al. U.S. Patent 6,176,576 (hereinafter, "Green"), and further in view of Spitzer U.S. Patent 6,091,546 (cited by Applicants).

III. Request for Reconsideration

Applicant requests reconsideration of the rejections and further requests allowance of the application on the basis of the following remarks.

IV. Obviousness Rejections

In the Office Action, claims 28-35, 37, and 39 are rejected as being obvious in view of the combination of Sygnator and Green. Applicants submit that claims 28-35, 37, and 39 are allowable in view of the combination of Sygnator and Green at least because Sygnator and Green, neither individually or in combination, show or suggest all the features of claims 28-35, 37, and 39.

Claim 28 recites

An earstem for eyeglasses used in a communication system
comprising:
a temple portion,

a speaker support portion for supporting a speaker mount, the speaker support being adapted and configured so that the position of the speaker mount can be adjusted by a wearer along two axes to be over at least a portion of the wearer's concha, wherein the two axes are inclined with respect to each other and parallel to the wearer's external ear, and

an earpiece portion, wherein the joined temple, speaker support, and earpiece portions are adapted and configured to support the speaker mount away from a wearer's outer ear with a gap sufficient to permit the wearer to hear environmental sounds without significant obstruction. (emphasis added)

The Examiner argues, by referring to Figs. 3 and 4 of Sygnator, that Sygnator has all the components of the present invention and is configured in a similar fashion. (see office action, Regarding claim 28, page 3) In the Examiner's analogy between Sygnator and the present invention, a pad serves as a speaker, a speaker mount, and an earpiece. For example, the examiner cites the "outer part" of the pad to be the pad mount, but according to Sygnator's specification (see below) the mount is the end portion 15a as shown in Figs. 3 and 4.

"In FIGS. 3 and 4, however, the end portion 15a of the arm 14a is provided with an endwise open transverse slot 18 within which an enlarged pad 20 is resiliently gripped for adjustment transversely and longitudinally of the slot for proper location relative to the auditory canal opening of the ear of a particular wearer. The pad is disposable and replaceable for varying the size thereof." (Sygnator, Column 2, lines 48-55) (emphasis added)

Unlike the present invention (see claim 28 above), the pad mount 15a is in fact in contact with wearer's outer ear without any gap (see Sygnator, Figs.3 and 4). It should be noted that if, as suggested by the Examiner, the Sygnator device is configured in the same fashion as the present invention, then the gap which is sufficient to permit the wearer to hear environmental sounds without obstruction would fail to protect the wearer from high decibel sounds, thus failing to meet the intended objective of the Sygnator invention. For this reason, it is entirely incorrect to

characterize Sygnator as providing a device that allows the wearer to hear environmental sounds in a unobstructed way, such as with a gap as taught by the present invention.

In another example of the analogy, the Examiner identifies the speaker to be the same as the earpiece portion and substitutes the pad for both of these components in the analogy. However, the speaker (*see* Fig. 1, 123, and paragraph 41) is not the same as the earpiece portion (*see* Fig. 1, 120, and paragraph 41). As such, the Examiner's conclusion that Sygnator has all the components of the present invention is incorrect.

Sygnator, the primary reference, is directed to an ear protection device in which the ear protector is attached to a temple bar covering the ear and reducing the high decibel noise of the environment. Nowhere does Sygnator describe or suggest that the ear protector can or does act as a speaker, or that the configuration permits the wearer to hear environmental sounds without significant obstruction. Green's device is similarly directed to a protective eyewear with a combined protective earplug having optional audio capabilities. Here too, there is no suggestion that the configuration of the earplug permits the wearer to hear environmental sounds without significant obstruction.

For this reason, Green's device is not provided with a gap between the pad and the ear. The addition of optional audio capabilities does not detract from the configuration of the Green device which is in contact with the wearer's ear. Thus, even if Green is combined with Sygnator, the resulting combination would have the pad in contact with the ear although perhaps not with the pad plugging the ear canal. This combination does not provide for a gap between the pad and ear as in the present invention, so that the present claims are not rendered obvious.

Accordingly, all the features of claim 28 are not described or suggested by Sygnator or Green, individually, or in combination. Furthermore, the present invention would not have been obvious, at the time of invention, based on Sygnator, Green, individually or in combination to a person of ordinary skill in the art. since, as discussed above, configuring the earplug to permit the wearer to hear environmental sounds without significant obstruction would be contrary to the main objective of both Sygnator and Green.

Claims 29-35, 37, and 39, which depend from base claim 28 are also allowable at least for the reasons provided herein for claim 28. Thus, the obviousness rejection of these claims has been overcome and should be withdrawn.

In the Office Action, claim 36 is rejected as being obvious in view of the combination of Sygnator, Green, and Cragg, while claims 38 and 40-45 are rejected as being obvious in view of the combination of Sygnator, Green, and Spitzer. As these claims depend from base claim 28, they are not obvious over these references at least for the reasons provided hereinabove for the allowance of claim 28. As the Cragg and Spitzer references, respectively, do not remedy the deficiencies of the combination of Sygnator and Green as to claim 28, their addition to that combination does not render obvious dependent claims 36, 38, and 40-45. Thus, these rejections have been overcome and should be withdrawn.

V. Conclusion

For the foregoing reasons, applicant submits that all of the claims are patentable over the cited art and respectfully requests reconsideration and an early indication of allowance. The Examiner is invited to contact the undersigned if any additional information is required.

Respectfully submitted,

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